

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

SB 2093 – HB 2407

March 21, 2016

SUMMARY OF ORIGINAL BILL: Creates the Public-Private Transportation Act of 2016. Authorizes private entities to develop, redevelop, and operate one or more transportation facilities. Encourages investment by private entities that facilitate development, redevelopment, and operation of transportation facilities in this state.

Authorizes a public entity to select a private entity to enter into a public-private initiative in accordance with the guidelines for solicited and unsolicited proposals adopted by the public entity. Authorizes a public entity to solicit, receive, consider, evaluate and accept a proposal for a qualifying transportation facility utilizing procurement approaches. Authorizes the public entity to charge a fee to cover its costs for processing, reviewing, and evaluating unsolicited and competing proposals. Requires any solicited or unsolicited proposal accepted by the Department of Transportation (TDOT) to first be submitted to and reviewed by the Fiscal Review Committee of the General Assembly for comment.

Requires a private entity to furnish adequate services and facilities if a certificate is issued and authorizes such entity to charge user fees to persons using the transportation facilities. Authorizes the public entity to enter into an interim agreement with the private entity permitting the private entity to begin activities for which it may be compensated for the proposed qualifying transportation facility.

Requires the private entity to obtain a certificate from a public entity and to enter into a comprehensive agreement with the public entity prior to the development, redevelopment, or operation of the qualifying transportation facility and requires the public entity to be reimbursed for costs in providing services. Authorizes the private entity to develop and operate the transportation facility and impose user fees or enter into service contracts concerning the use of the facility without further approval by the General Assembly. Requires any state funding be appropriated by the general appropriations act to the project or services for the transportation facility.

Authorizes the public entity to obtain federal, state, or local assistance for a transportation facility provided that the federal funds available to or received by the state are subject to appropriation by the General Assembly. Authorizes the public entity to hire engineers to examine the location and plans in connection with moving or relocating facilities that are to be crossed by the transportation facility or those that will require relocating due to the development. Authorizes TDOT to promulgate rules in accordance with Uniform Administrative Procedures Act. Requires the Act to take effect October 1, 2016.

FISCAL IMPACT OF ORIGINAL BILL:

Increase State Revenue - Exceeds \$160,000/Highway Fund
Increase State Expenditures – Exceeds \$160,000/Highway Fund

Increase Local Revenue – Exceeds \$60,000/Permissive
Increase Local Expenditures – Exceeds \$60,000/Permissive

Other Fiscal Impact - State and local entities entering into agreements with private entities for the purpose of developing transportation facilities could free up funding within state and local governments to expend on other transportation related projects. The extent to which, and the timing for which, this will occur is unknown and dependent upon multiple unknown factors. However, any net change in state or local expenditures for transportation projects is considered not significant.

In addition, the amount of federal funding allocated to such projects could decrease as private capital is utilized; this could result in federal funding being available for other state and local projects. The extent to which, and the timing for which, this will occur is unknown and dependent upon multiple unknown factors. However, any net change in federal funding to state and local governments is estimated to be not significant.

SUMMARY OF AMENDMENTS (013652, 014778): Amendment 013652 deletes and rewrites the bill such that the substantive changes are as follows: (1) redefines transportation facility to exclude highways, bridges, tunnels, and overpasses; (2) requires a statement of the risks, liabilities, and responsibilities to be transferred or assigned to the private entity for development, redevelopment, or operation of the transportation facility including revenue risk and any operation and maintenance; (3) authorizes a public entity to grant approval if it determines that the proposed development, redevelopment, or operation of the transportation facility serves the public interest; (4) requires the public entity to require the private entity to pay for cost for an independent audit of any and all cost estimates associated with the private entity's proposed development, redevelopment, or operation for any project with an estimated cost exceeding \$50,000,000; (5) requires any project or qualifying transportation facility for which TDOT is the responsible public entity and for which toll revenue is collected, to be included the Department's transportation improvement program submitted to the General Assembly for approval; (6) requires the public entity to submit a plan of financing to the Comptroller of the Treasury (COT) for any action authorizing grants, milestone payments, or loans prior to adoption of such grants, payments or loans; (7) authorizes the COT to request additional information to review the proposed plan of financing; and (8) requires the evaluation of each plan of financing to be based on the plan's circumstances and only approved if such plan is in the public's interest.

Amendment 014778 deletes and replaces language of the bill as amended by amendment 013652 without making any substantive changes to the legislation.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENTS:

Unchanged from the original fiscal note.

Assumptions for the bill as amended:

- The proposed bill as amended authorizes public entities (state and local governments) to contract with private entities to develop, operate, redevelop, and accept funding for transportation facilities and requires TDOT to conduct a preliminary evaluation on any public-private partnership proposal.
- It is assumed that no private-public agreements would be entered into by the state or by a local government entity if the terms of such agreements were not economically beneficial for such entities relative to the cost outcomes that would be experienced under current law.
- The costs of any preliminary evaluation conducted by TDOT cannot be precisely quantified, but it is reasonable to presume that any evaluation conducted by TDOT will increase state expenditures from the Highway Fund by an amount exceeding \$50,000.
- Based on the information provided by TDOT, the costs to advertise a project in a national publication for the purpose of receiving competitive proposals from private entities for any transportation facility project is estimated to exceed \$60,000.
- It is assumed that at least one public-private partnership project will occur each year between the state and a private entity; and at least one public-private partnership project will occur each year between a local government entity and a private entity.
- The recurring increase in state expenditures from the Highway Fund relative to at least two projects each year is estimated to exceed \$160,000 [\$100,000 (for completion of two TDOT evaluations) + \$60,000 (advertising for state-private project only)].
- The permissive and recurring increase in local expenditures is estimated to exceed \$60,000 (advertising for local-private project).
- It is assumed that both state and local agencies will charge fees sufficient to cover all evaluation and advertising costs incurred pursuant to the provisions in the bill as amended. Therefore, the recurring increase in state revenue to the Highway Fund is estimated to exceed \$160,000 per year; and the permissive and recurring increase in local government revenue is estimated to exceed \$60,000 per year.
- State and local entities entering into agreements with private entities for the purpose of developing transportation facilities should free up funding within state and local governments to expend on other transportation related projects. The extent to which this will occur, and the timing for which this would occur, is unknown and dependent upon multiple unknown factors.
- State and local entities entering into agreements with private entities for the purpose of developing transportation facilities could free up available federal funding for other transportation projects given the extent of private capital that would be utilized.
- To the extent any user fees or tolls would be imposed under current law for any such projects, but would be imposed and retained by private entities and TDOT under the provisions of this bill as amended, there could be recurring forgone state and local

revenue; the extent and timing of which is unknown and dependent upon multiple unknown factors.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in blue ink that reads "Krista M. Lee". The signature is written in a cursive, flowing style.

Krista M. Lee, Executive Director

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